

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHERMAN GRAHAM,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,

Defendants.

Index No. 05 Civ.
5428(CBA)(JMA)

STOECKER DECLARATION

Karl J. Stoecker declares pursuant to 28 U.S.C. § 1746
as follows:

1. Exhibit A hereto is an true and correct copy of
the transcript of the deposition of Chief Peter Curcio taken on
May 14, 2009.

I declare, under penalty of perjury, that the
foregoing is true and correct.

Dated: Mineola, New York
June 12, 2009

Law Offices of Karl J. Stoecker
22 Jericho Turnpike, Suite 100 East
Mineola, New York 11501
(212) 818-0080
kjs@kjslawfirm.com

_____/s_____
Karl J. Stoecker (KS 0571)

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHERMAN GRAHAM,

Plaintiff,

- against -

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,

Defendants.

-----X

22 Jericho Turnpike
Mineola, New York
May 14, 2009
12:05 P.M.

EXAMINATION BEFORE TRIAL of PETER

CURCIO, a witness on behalf of the Defendants
herein, taken by the attorneys for the respective
parties, pursuant to Notice, and held before
Sharon Cassidy, a Notary Public of the State of
New York at the above-stated time and place.

* * * *

COPY

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APPEARANCES:

KARL J. STOECKER, ESQ.
Attorney for the Plaintiff
22 Jericho Turnpike, Suite 100 East
Mineola, New York 11501

NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
Attorneys for the Defendants
100 Church Street
New York, New York 10007

BY: IVAN A. MENDEZ, JR., ESQ.

FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED,
by and between the parties hereto, through
their respective Counsel, that the
certification, sealing and filing of the
within examination will be and the same are
hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, will be reserved to the
time of trial;

IT IS FURTHER STIPULATED AND AGREED
that the within examination may be signed
before any Notary Public with the same
force and effect as if signed and sworn
to before the Court.

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4

2 P E T E R C U R C I O,

3 The witness herein, having first been duly
4 sworn by Sharon Cassidy, a Notary Public in and
5 for the State of New York, was examined and
6 testified as follows:

7 DIRECT EXAMINATION BY KARL J. STOECKER, ESQ.:

8 Q Please state your name for the record.

9 A Peter Curcio.

10 Q What is your business address?

11 A 1313 Hazen Street, East Elmhurst, New
12 York 11378.

13 Q Chief Curcio, I am Karl Stocker. I
14 represent the plaintiff Sherman Graham in this
15 case. I am here to ask you a series of questions
16 about your duties and responsibilities at the
17 Department of Corrections and in particular a
18 number of events that occurred with respect to
19 Sherman Graham, the plaintiff in this case.

20 Have you been deposed before?

21 A Yes.

22 Q On how many occasions?

23 A Three to four.

24 Q Were they work-related matters?

25 A Yes.

1

Peter Curcio

5

2 Q What types of matters were they?

3 A The latest was in a labor litigation
4 with the Captain's Association against the agency,
5 against shift reductions. The one previous to
6 that was a female class action, plaintiffs against
7 the agency at large.

8 Q What was the nature of the class
9 action?

10 A That females were being discriminated
11 against.

12 Q All females within the department?

13 A The plaintiffs were suggesting that,
14 yes.

15 Q And you were deposed in that case?

16 A Yes.

17 Q When did that occur?

18 A Within the last quarter.

19 Q The last three months?

20 A Three to four months ago.

21 Q And the other time you were deposed?

22 A Probably within the last six months,
23 five to six months ago.

24 Q What was that about?

25 A Shift reductions for captains.

1 Peter Curcio 6

2 Q Was the last deposition in the context

3 of a grievance filed by the union?

4 A The latter one was with the shift

5 reductions. The first one was, to my

6 understanding, a class action suit by the

7 plaintiffs.

8 Q The first one was --

9 A The lawsuit by the females against the

10 agency. It was a class action lawsuit. The

11 latter one was with the shift reductions based on

12 a grievance.

13 Q You said there were three, correct?

14 A Yes.

15 Q The first one was with respect to shift

16 reduction. You mentioned that was a grievance as

17 well?

18 A The most recent one was grievance

19 related. The one prior to that was the class

20 action.

21 Q And the one before that?

22 A Possibly related to this case.

23 Q Related to this case?

24 A Or something to do with my tenure at

25 ARDC.

1

Peter Curcio

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2

Q What was the issue with respect to your

3

tenure at ARDC in that case?

4

A Officer Monche filed a complaint that

5

mentioned Captain Graham as well.

6

Q Officer Monche?

7

A M-O-N-C-H-E.

8

MR. MENDEZ: Off the record, please.

9

(Whereupon, there was a discussion

10

held off the record.)

11

Q With respect to this matter relating to

12

Officer Monche's complaint, what exactly did you

13

do in that?

14

A They asked about my duties and

15

responsibilities.

16

Q Who was it that asked you?

17

A I don't have counsel's name. It was

18

somewhere in midtown Manhattan.

19

Q Was there a court reporter there who

20

was transcribing the conversation?

21

A Yes.

22

Q That case concerned a complaint by

23

Officer Monche?

24

A Yes.

25

Q And the plaintiff Sherman Graham was

1 Peter Curcio 8
2 mentioned in that complaint?
3 A Peripherally, I believe so, yes.
4 Q So you've been through this a number of
5 times. I take it you're familiar with the ground
6 rules?
7 A Yes.
8 Q That all your responses are under oath,
9 therefore, it's very important you understand the
10 question before you respond. If you don't
11 understand it, you can let me know and I will
12 rephrase it.
13 A Yes.
14 Q Why don't you just briefly summarize
15 very quickly your history of employment at the
16 DOC, what positions you've held there?
17 A Okay. I started with the agency in
18 1984. I got promoted to captain in 1989. I got
19 promoted to assistant deputy warden in 1996. I
20 got promoted to deputy warden around 1998. I got
21 promoted to deputy warden in command around 2000.
22 I got promoted to warden in or around 2002. I was
23 assigned to assistant chief in 2006 and borough
24 chief in 2007.
25 Q When you say borough chief, was that

1 Peter Curcio 9

2 chief of a particular borough?

3 A Initially, I was chief of
4 administration. Since December of 2008, I have
5 been chief of facility operations.

6 Q When you were the assistant chief, what
7 division was that?

8 A Assistant chief of administration.

9 Q What were your duties and
10 responsibilities as the assistant chief of
11 administration?

12 A To oversee the agency's correction
13 academy, firearms and tactic's unit, officer's
14 response unit and CARE. I was in charge of health
15 management, the overtime control unit and in
16 charge of the uniform resource allocation.

17 Q What does that mean?

18 A That office administers transfers and
19 moves between the various facilities.

20 Q What did you do in that capacity?

21 A I oversaw the unit, the uniform
22 resource allocation command.

23 Q What did you actually do? When you say
24 you oversaw the unit, what did that entail?

25 A Assignment of probationary officers to

1

Peter Curcio

10

2 the facilities, spec up transfers for final
3 approval by the chief of the department.

4 Q Now, the first one you stated was the
5 assignment of probationary officers.

6 A When they graduate from the academy,
7 where they will be deployed.

8 Q So that was the first thing.

9 A That was one of the duties.

10 Q What did you do in that regard?

11 A The office would do a ratio of where
12 different employees should go. In that regard, I
13 would oversee, I would make adjustments where I
14 saw fit and execute the deployment.

15 Q The second thing you mentioned was the
16 specific up transfer.

17 A Members put in transfer requests and
18 they're accommodated based on the needs of the
19 agency, tenure, performance, seniority, etcetera.
20 The office would then review the transfer request
21 based on needs of the facilities, who needs to go
22 where, and I would review that and prepare it for
23 final authority by the chief of the department.

24 Q So you reviewed every transfer request
25 made by every employee or a certain subset of

1

Peter Curcio

11

2 employees or what?

3 A Those that were screened and vetted and
4 were needed in the facility.

5 Q I'm not sure what you mean by screened
6 and vetted. How would that process work?

7 A For example, a desirable place to go
8 are the hospitals. A thousand employees could put
9 in transfers to the hospitals, but if there are
10 only three positions needed or three vacancies, I
11 wouldn't see the nine hundred and ninety-nine
12 transfers. They would review them, pick the
13 earliest one, look at seniority, attendance and
14 execute the movement, like the ones that have
15 already been vetted, review it and make sure they
16 meet the criteria and send it on to the chief of
17 department for final review.

18 Q So this was the process that you're
19 talking about now, the so-called spec up
20 transfers, that was an instance in which a member
21 of service himself put in a request for a
22 transfer?

23 A Self solicited, yes.

24 Q Other than the probationary officers,
25 that is those leaving the academy, and the self

1

2 solicited?

3 A Self solicited.

4 Q Did you do anything else with respect
5 to the resource allocation?

6 A Disciplinary transfers, any movement of
7 staff.

8 Q When you say any movement of staff?

9 A Request by the inspector general,
10 request by --

11 Q I just want be clear. You're
12 mentioning specific circumstances in which you
13 could possibly get involved. But you don't review
14 every transfer that occurs at the Department of
15 Corrections?

16 A I do not review every transfer request.
17 In that position I reviewed every transfer that
18 was executed. As I stated, many members can
19 request a transfer. The ones that were executed,
20 once it was validated, it would go on the agency
21 teletype and I would review that teletype before
22 it was promulgated.

23 Q What you're talking about is with
24 respect to self solicited?

25 A That is one component. Any transfer,

1

Peter Curcio

13

2 self solicited or initiated, by one of the other
3 persons that I mentioned, inspector general, the
4 investigation division.

5 Q For example, if an assistant deputy
6 warden decides to move one of his captains from,
7 let's say, the control room to the being where
8 they're in confinement for twenty-three hours a
9 day -- what is that called again?

10 A CPSU.

11 Q If an assistant warden wants to move
12 one of his captains from the control room to the
13 CPSU or something like that, you would review
14 something like that?

15 A I need to understand the question
16 because I think you may be --

17 MR. MENDEZ: Are you asking one
18 facility --

19 A Within one facility?

20 MR. MENDEZ: -- or from one facility --

21 Q Within one facility?

22 A Within one facility, that's under the
23 direction of the warden.

24 Q You have nothing to do with that?

25 A In my position as chief administration,

1

2 no.

3

Q So what's the distinction if a move is
4 within a facility or if it's from facility to
5 facility?

6

A From facility to facility, chief
7 administration, I would get involved. The warden
8 of the facility has overall supervision of the
9 facility. He would get involved with placements
10 in his facility.

11

Q So you would have final authority if
12 someone is moving from facility to facility and if
13 someone is moving from one position within a
14 facility to another position within that same
15 facility, the warden would have final authority?

16

MR. MENDEZ: Objection to form. You
17 can answer.

18

A Yes. Just to clarify the first part,
19 you said as chief of administration. I wasn't the
20 final authority. I would work up a draft that
21 would need final approval by the chief of the
22 department. I would work up that draft on the
23 chief's behalf, Chief Carolyn Thomas, in reference
24 to a facility.

25

Q So for an interfacility transfer, the

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Peter Curcio

15

2 warden would have final authority?

3 A Yes.

4 MR. STOCKER: I would like to mark this
5 as Plaintiff's Monell Exhibit 1.

6 (Whereupon, a two-page document was
7 marked as Plaintiff's Monell Exhibit 1 for
8 identification, as of this date.)

9 Q Plaintiff's Monell Exhibit 1 is a
10 two-page document. At the bottom it says, Warden
11 001 and the next page says, Warden 002.
12 Apparently this is an excerpt from another
13 document which was produced to us by your counsel,
14 Mr. Mendez. Are you familiar with this document?

15 A Yes. It looks like the duties of a
16 warden.

17 Q Can you describe where this comes from?

18 A No.

19 Q You don't know if this comes out of
20 some manual or directive?

21 A No, but this replicates the rules and
22 regulations.

23 Q Do those rules and regulations have a
24 more formal name?

25 A Rules and regulations.

1

2 Q Is it called the official rules and
3 regulations of the New York City Department of
4 Corrections or something like that?

5 A Yes. It's just called the rules and
6 regulations.

7 Q So this is an excerpt from the rules
8 and regulations?

9 A I am not sure if it's an except, but
10 it's a summary of the duties of a warden covered
11 in the rules and regs.

12 Q So this reflects what is in the rules
13 and regulations, as far as you're aware?

14 A Yes.

15 Q What's your understanding of what the
16 rules and regulations are and where do they come
17 from and what is their purpose?

18 A They come from the rules and regs and
19 they govern the authority of a warden.

20 Q Who promulgates the rules and regs?

21 A The commissioner of the agency.

22 Q The commissioner of the Department of
23 Corrections?

24 A Yes.

25 Q He promulgates the rules and regs under

1 Peter Curcio 17
2 the authority delegated to him by the New York
3 City Law, is that your understanding?
4 A Yes.
5 Q So he is given the authority to do
6 various things by the commissioner?
7 MR. MENDEZ: Note my objection. Go
8 ahead.
9 Q Is that correct?
10 A Yes.
11 Q And your understanding is that this
12 reflects his delegation of that authority to the
13 wardens?
14 MR. MENDEZ: Note my objection. Go
15 ahead.
16 A His authority is governed by the rules
17 and regs and the direction that he assigns to the
18 wardens.
19 Q Your understanding is that the
20 commissioner of the Department of Corrections is
21 given certain authority of the Department of
22 Corrections and then he delegates that authority
23 to wardens; is that correct?
24 A Yes.
25 Q And the exhibit you have before you,

1
2 Plaintiff's Monell Exhibit 1, reflects the
3 authority he delegates to the wardens?

4 A Yes.

5 Q This exhibit, does it accurately
6 reflect the authority that you understood was
7 delegated to you during the time that you were a
8 warden?

9 MR. MENDEZ: Just read it closely.

10 A Yes.

11 MR. STOCKER: Please mark this as
12 Plaintiff's Monell Exhibit 2.

13 (Whereupon, Declaration of Chief Peter
14 Curcio was marked as Plaintiff's Monell
15 Exhibit 2 for identification, as of this
16 date.)

17 Q Please take a look at Plaintiff's
18 Monell Exhibit 2.

19 A Okay.

20 Q I take it you've seen Exhibit 2 before?

21 A Yes.

22 Q That's your declaration; is that
23 correct?

24 A Correct.

25 Q How was this document prepared?

1 Peter Curcio 19

2 MR. MENDEZ: I am going to object on
3 the grounds of attorney/client privilege.

4 Q Did you prepare the document?

5 MR. MENDEZ: Go ahead.

6 A I was involved in the preparation of
7 the document, yes.

8 Q What was the extent of that
9 involvement?

10 MR. MENDEZ: Let's go off the record,
11 please.

12 (Whereupon, there was a discussion
13 held off the record.)

14 A Counsel and I discussed the case and
15 the particulars. I gave him information to
16 general questions. He prepared the declaration on
17 my behalf. I reviewed it, I attested it was
18 accurate and I signed it.

19 Q When you attested it was accurate, you
20 understood that the statements made in this
21 declaration were sworn statements under penalty of
22 perjury?

23 A Yes, and true to my belief and
24 knowledge.

25 Q So every statement that you made in

1
2 this document is true?

3 A To my belief and knowledge, yes.

4 Q If you look at page two, paragraph
5 five, the second half of the page, do you see
6 that?

7 A Yes.

8 Q Does that accurately state your duties
9 as warden of ARDC?

10 A Yes.

11 Q And that's consistent with Exhibit 1,
12 the excerpt from the rules and regulations?

13 A In summary, yes.

14 Q Is the same true with respect to
15 paragraph six? Does that paragraph accurately
16 reflect your responsibilities when you were a
17 warden of ARDC?

18 A Yes, it does.

19 Q And that, again, is consistent with the
20 rules and regulations?

21 A In summary, yes.

22 Q When you say summary, what do you mean?

23 A Obviously the context isn't two pages
24 long like the attachment. This summarizes that I
25 had final say of all the decisions in the

1

Peter Curcio

21

2 facility.

3 Q In Plaintiff's Monell Exhibit 1?

4 A Yes.

5 MR. STOCKER: Please mark this as
6 Plaintiff's Monell Exhibit 3.

7 (Whereupon, a one-page document was
8 marked as Plaintiff's Monell Exhibit 3 for
9 identification, as of this date.)

10 Q I am going to show you what's been
11 marked as Plaintiff's Monell Exhibit 3. Have you
12 seen this document before?

13 A I don't have a recollection, but
14 likely, yes.

15 Q Is this a document prepared by you?

16 A Somebody signed it on my behalf.

17 Q Who would have signed it?

18 A It could have been one of the deputy
19 wardens.

20 Q Could you explain what that means,
21 somebody signed it on your behalf?

22 A If I'm out for the day or out for the
23 week, my authority is relegated to somebody else
24 whose position is in charge.

25 Q But it's from you, not from that

1
2 person?

3 A They signed it on my behalf.

4 Q That reflects it's your authority that
5 is being implemented here?

6 A Yes.

7 Q What is the purpose of this document?

8 MR. MENDEZ: Let's go off the record,
9 please.

10 (Whereupon, there was a discussion
11 held off the record.)

12 Q What is being done within this
13 document?

14 A It appears that the school post which
15 we're referring to, the learning center captain,
16 is temporarily being assigned to Captain T.
17 Robinson.

18 Q Why is it you're announcing that?

19 A To advise the command that this is the
20 decision that was made.

21 Q And this was your decision?

22 A Yes.

23 MR. STOCKER: I have no further
24 questions.

25 MR. MENDEZ: I am going to ask him a

1

Peter Curcio

23

2 couple of follow-up questions.

3 DIRECT EXAMINATION BY IVAN A. MENDEZ, JR. ESQ.:

4 Q Good afternoon, Chief. I just want to
5 ask you some follow-up questions related to your
6 authority as warden at ARDC, during your tenure
7 there.

8 A Okay.

9 Q As warden at ARDC or any other
10 correctional facility, do you have the authority
11 to promulgate or draft employment policies
12 concerning the employment of employees within the
13 department?

14 MR. STOCKER: Object to the form. It's
15 vague and ambiguous.

16 A No.

17 Q For example, do you have the authority
18 to make up what constitutes a terminable offense
19 for a correctional officer?

20 A No.

21 Q Do you have the authority to dictate
22 how many sick days a corrections officer can take?

23 A No.

24 Q Do you have the authority to dictate
25 what type of uniform a corrections officer has to

1

Peter Curcio

24

2 wear?

3 A No.

4 Q Do you have the authority as warden of
5 a facility to fire on your order a tenured
6 corrections officer?

7 A No.

8 Q Or a captain?

9 MR. STOCKER: You're going too fast. I
10 object to the form of the question about this
11 notion of tenured corrections officer.

12 Q A nonprobationary corrections officer,
13 can you terminate a nonprobationary corrections
14 officer?

15 MR. STOCKER: I object to the form.

16 A No.

17 Q What's your understanding of what
18 tenured means, Chief?

19 A Somebody that is not on probationary
20 period.

21 Q Is it your understanding that somebody
22 who is no longer probationary has certain due
23 process rights that they're entitled to?

24 A Yes.

25 Q Do you have the authority as warden of

1

Peter Curcio

25

2 a facility to terminate a corrections captain who
3 is no longer probationary?

4 A No. A warden cannot even terminate a
5 probationary captain.

6 Q Chief, I want to direct you to
7 Plaintiff's Monell Exhibit 2 which is your
8 declaration. I want to direct your attention to
9 paragraph six where it indicates quote, as ARDC
10 warden, I have final say concerning any special
11 decisions within my facility, including removing,
12 reassigning or transferring captains to different
13 posts or towers. I think you already just
14 testified to this, but does that authority entail
15 terminating employees?

16 MR. STOCKER: I object to the form of
17 the question, to the use of the word
18 terminating.

19 A No.

20 Q Or firing?

21 A No.

22 Q Are these decisions which you describe
23 in paragraph six, such as reassigning or
24 transferring captains to different posts, are
25 those decisions you make as a warden pursuant to

1 Peter Curcio 26
2 your own rules and regulations?

3 A No.

4 Q Whose rules and regulations are you
5 following when you take such actions?

6 A The rules and regs and parameters for
7 wardens as issued by the chief executive
8 commissioner.

9 MR. MENDEZ: I have no further
10 questions. Thank you.

11 (Whereupon, the examination of this
12 witness was concluded at 12:40 P.M.)

13 * * * *

14 I have read the foregoing record of my
15 testimony taken at the time and place noted in the
16 heading hereof and I do hereby acknowledge it to
17 be a true and correct transcript of same.

18 _____
19 PETER CURCIO

20 Subscribed and sworn to
21 before me this ____ day
22 of _____, 2009.

23
24 _____
25 NOTARY PUBLIC

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EXAMINATION OF

BY

PAGE

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Peter Curcio

Mr. Stocker

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EXHIBITS

9

PLAINTIFF'S MONELL

DESCRIPTION

PAGE

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Two-page document

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Declaration of Chief

12

Peter Curcio

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One-page document

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C E R T I F I C A T I O N

I, Sharon Cassidy, a Notary Public of
the State of New York do hereby certify:

That the testimony in the within
proceeding was held before me at the aforesaid
time and place. That said witness was duly sworn
before the commencement of the testimony, and that
the testimony was taken stenographically by me,
then transcribed under my supervision, and that
the within transcript is a true record of the
testimony of said witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, that I am not interested directly or
indirectly in the matter in controversy, nor am I
in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18th day of May, 2009.

Sharon A. Cassidy

SHARON CASSIDY